TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 47

SALVATORE FALCONE AND JOSEPH FALCONE,
PETITIONERS,

vs.

HAROLD E. BARNES, OFFICER IN CHARGE OF IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 12, 1955

CERTIORARI GRANTED MAY 16, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

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[fol. 1]

IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Application of HAROLD E. BARNES, Officer in Charge of Immigration and Naturalization Service, for Process to Enforce Subpoena as to Salvatore Falcone, Civil No. 1495

Application of HAROLD E. BARNES, Officer in Charge of Immigration and Naturalization Service, for Process to Enforce Subpoena as to Joseph Falcone, Civil No. 1494

On Appeal from the United States District Court for the Northern District of New York

STATEMENT UNDER RULE 15 (b)

The above entitled actions were commenced by service of an Order to Show cause upon Joseph Falcone (R. 3) and upon Salvatore Falcone. Said Orders to Show Cause, both signed by Hon. Stephen W. Brennan, D. J., were filed with the Clerk of the Court on September 9, 1953. On September 21, 1953 Anthony S. Falcone, Esq. filed a notice of Special Appearance on behalf of Joseph Falcone (R. 11) and Salvatore Falcone.

[fol. 2] Hon. James T. Foley, D. J., by written Memorandum filed November 21, 1953, denied plaintiff's requested relief in both actions (R. 38). An order in accordance with said Memorandum was filed December 3, 1953 in Joseph Falcone (R. 49) and Salvatore Falcone actions.

Notice of Appeal on behalf of the plaintiff was filed January 15, 1954 in both Joseph Falcone (R. 52) and Salvatore Falcone actions. A Stipulation and Order extending time to file record and docket appeal in both was filed February 19, 1954 in Joseph Falcone (R. 53) and Salvatore Falcone actions.

[fol. 3] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

In the Matter of Application of HAROLD E. BARNES, Officer in Charge of Immigration and Naturalization Service, for Process to Enforce Subpoena as to Joseph Falcone

ORDER TO SHOW CAUSE—September 9, 1953

Upon reading and filing the application herein, duly verified on the 3rd day of September, 1953, praying for an order of this Court to compel compliance with a subpoena of the Officer in Charge of the Syracuse Office of the Immigration and Naturalization Service in the U. S. Department of Justice, duly served on Joseph Falcone at 519 Bleecker Street, Utica, New York, on the 18th day of June, 1953,

Now, on motion of Anthony F. Caffrey, United States Attorney, attorney for the said Harold E. Barnes, it is hereby

Ordered that the said Joseph Falcone show cause before this Court at a term thereof to be held at the Federal Court House at Albany, New York, on the 21st day of September, 1953 at 10 o'clock A. M. on said day or as soon thereafter as counsel may be heard, why he should not be ordered and directed to appear before Harold E. Barnes, Officer in Charge of the Immigration and Naturalization Service and to testify before duly authorized agents and employees of the Immigration and Naturalization [fol. 4] Service and to produce for inspection and examination evidence of the date and place of his birth, his original entry into the United States and his naturalization certificate and in default, thereof, to be punished by this Court as a contempt thereof, and it is further

Ordered that service of a copy of this order and the papers upon which it is granted on the said Joseph Falcone on or before the 16th day of September, 1953, shall be deemed sufficient.

Dated: September 9th, 1953.

Stephen W. Brennan, United States District Judge.

[fol. 5] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF HAROLD E. BARNES IN SUPPORT OF ORDER TO SHOW CAUSE

Now comes Harold E. Barnes, applicant in the above cause, by Anthony F. Caffrey, United States Attorney for the Northern District of New York, and respectfully represents to the Court as follows:

1. Harold E. Barnes is the Officer in Charge of the Immigration and Naturalization Service, United States Department of Justice, at Syracuse, New York.

2. On June 18, 1953, Frank E. Latchford was the Acting Officer in Charge at Syracuse, New York, in the absence of the Officer in Charge.

3. Under Section 340 of the Immigration and Nationality Act (8 U. S. C. 1451) an order admitting a person to citizenship may be revoked and set aside if procured by concealment of a material fact or by willful misrepresentation; and by Section 340-11, Title 8 C. F. R., the District Director of Immigration and Naturalization is required to cause an investigation to be made in appropriate cases to determine whether grounds for revocation exist.

4. There is presently under investigation by the Syracuse Office of the Immigration and Naturalization Service the Legality of the Naturalization of Joseph Falcone who was naturalized in the Supreme Court of New York at Utica on February 18, 1925, and Certificate of Naturalization No. C-2118748 was issued to him.

[fol. 6] 5. In connection with the aforementioned investigation and pursuant to the authority contained in Section 235 of the Immigration and Nationality Act (8 U. S. C. 1225) and 8 C. F. R. 287.4, Acting Officer in Charge, Frank E. Latchford issued a subpena on June 18, 1953, directing the said Joseph Falcone to appear at 304 Federal Building, Syracuse, New York, on June 23, 1952, at 10:00 AM, E. D. S. T. to give testimony before an Officer of the Immigration and Naturalization Service and to produce evidence of the date and place of his birth, his original entry into the United States, and to produce his naturalization certificate.

Attached hereto and made a part hereof as "Exhibit A" is a copy of said subpena.

6. A copy of the subpena was personally served upon the said Joseph Falcone at Utica, New York, on June 18, 1953 by Stanley W. Anderson, an investigator of the Immigration and Naturalization Service.

7. Joseph Falcone appeared at the time and place specified in the subpena and he was accompanied by counsel. The said Joseph Falcone stated his name, place of residence, date and place of birth, and that he was a naturalized citizen of the United States. He also produced for inspection a birth certificate and a certificate of naturalization which he stated related to his birth and naturalization. However, he refused to testify under oath and refused to furnish any further information or to give any testimony concerning names used by himself and other members of his family; the time, place and manner of his entry into the United States; or matters relating to his places of residence and activities in the United States after entry.

8. The testimony of the naturalized person and the documents requested are essential to the investigation [fol. 7] pending in the Syracuse Office of the Immigration and Naturalization Service.

Wherefore, applicant respectfully prays for an order of this Court directing the said Joseph Falcone to appear and testify at a time and place to be designated by the Court before an Officer of the Immigration and Naturalization service and to produce the books, papers and documents set forth in the forementioned subpena, and for such other and further relief as to the Court may seem just and proper.

Anthony F. Caffrey, United States Attorney, Attorney for Applicant.

[fol. 8] *Duly sworn to by Harold E. Barnes. Jurat omitted in printing.*

[fol. 9] EXHIBIT "A" TO AFFIDAVIT

United States of America
Department of Justice
Immigration and Naturalization Service

Office of Origin:

Syracuse, New York

Subpena

Date June 18, 1953

In re Joseph Falcone

To: Joseph Falcone
1623 Mohawk Street
Utica, New York

Pursuant to the provisions of Section 235 (a) of the Immigration and Nationality Act, you are hereby commanded to attend and give testimony as set forth below, viz:

Place of appearance: 304 Federal Bldg., Syracuse, New York

Time you are required to appear: 10:00 AM EDST

Date you are required to appear: Tuesday, June 23, 1953

You are also commanded to produce and bring with you the following books, papers, and documents, viz: evidence of your birth and of your original entry into the United States, and your naturalization Certificate. You are further commanded to make a statement before an officer of this Service at that time.

(S.) F. E. Latchford,
(Name)
Acting Officer in Charge
(Title)

[seal]

[fol. 10] Return on Service of Subpena

I hereby certify that on the 18th day of June, 1953, I served the above subpena on the witness named above by personal service at 519 Bleecker Street, Utica, New York.

(S.) Stanley W. Anderson,
(Name)
Investigator (General)
(Title)

[fol. 11] In the United States District Court for the Northern District of New York

Notice of Special Appearance

Please Take Notice that Anthony S. Falcone, Esq., attorney for Joseph Falcone, appears specially herein on behalf of Joseph Falcone in the above-entitled matter, for the purpose and only for the purpose of moving to set aside the subpoena in said matter and the service thereof, and that said Joseph Falcone does not appear generally in this matter.

Anthony S. Falcone, Attorney for Joseph Falcone, appearing specially, Office and Post Office Address, 1213-1214 First National Bank Building, Utica, New York.

To: Hon. Anthony F. Caffrey, United States Attorney, 206 Federal Building, Syracuse, New York.

[fol. 12] In the United States District Court for the Northern District of New York

Affidavit of Anthony S. Falcone in Support of Notice To Set Aside Subpoena

State of New York
County of Oneida
City of Utica ss.:

Anthony S. Falcone, being duly sworn, deposes and says:

First

That he is the attorney for Joseph Falcone in the above-entitled matter and is appearing specially herein for the purpose of this motion only to move to set aside the subpoena in this matter and the service thereof.

Second

That Joseph Falcone resides at 1623 Mohawk Street, Utica, New York.

Third

That attached hereto and made a part hereof and marked Exhibit "A" is a copy of Section 235 of the Immigration and Nationality Act (8 U. S. C. 1225).

Fourth

That attached hereto and made a part hereof and marked Exhibit "B" is a copy of a letter dated April 24, 1953 [fol. 13] addressed to Joseph Falcone and signed by H. E. Barnes requesting Joseph Falcone to appear before Mr. Stanley W. Anderson for an interview on Wednesday, April 29, 1953 at 11:00 A. M. at the Oneida County Clerk's Office, Utica, New York.

Fifth

That attached hereto and made a part hereof and marked Exhibit "C" is a copy of subpoena served upon Joseph Falcone commanding him to appear at 304 Federal Building, Syracuse, New York on Tuesday, June 23, 1953 pursuant to the provisions of Section 235 (a) of the Immigration and Nationality Act (8 U. S. C. 1225).

Sixth

That on April 29, 1953 at 11:00 A. M. in compliance with said letter (Exhibit "B"), said Joseph Falcone and his attorney, Anthony S. Falcone, deponent herein, appeared at the appointed time and place before Officer Stanley W. Anderson. That deponent questioned officer Anderson as to the reason for said hearing but said hearing officer refused to divulge its purpose but did state that he had a number of questions that he desired to ask of Joseph Falcone before a stenographer which he brought and that counsel for Joseph Falcone could object to same if he so desired.

That deponent informed Officer Anderson that since he refused to divulge the reason for this interview, that under advice of counsel his client, Joseph Falcone, would not answer any questions and that the interview was at an end.

[fol. 14]

Seventh

That on June 18, 1953, Joseph Falcone was served with a subpoena (Exhibit "C") to appear at the Federal Building, Syracuse, New York at 10:00 A. M. EDST on Tuesday, June 23, 1953, pursuant to Section 235 (a) of the Immigration and Nationality Act, (8 U. S. C. 1225), and was commanded to produce the following, viz: evidence of birth, original entry into the U. S., naturalization certificate, and was further commanded to make a statement before an officer of the Service at that time. That at the appointed time, place and date, said Joseph Falcone appeared with his attorney, Anthony S. Falcone, and John C. Smith of counsel.

Eighth

That Anthony S. Falcone, attorney for Joseph Falcone, and John C. Smith of counsel, advised the hearing officer, Stanley W. Anderson, that they were appearing specially for Joseph Falcone and not generally and respectfully objected to the jurisdiction under which said subpoena was allegedly issued by said Immigration and Naturalization Service, and read into the record Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1225), (Exhibit "A").

That nevertheless, Joseph Falcone voluntarily exhibited to said hearing officer the documents in his possession, namely his birth certificate and his naturalization certificate.

Ninth

That Section 235 of the Immigration and Nationality Act of 1952 does not apply to Joseph Falcone. That a [fol. 15] reading of said section and its subsections thereto refers to aliens only and refers particularly to any person seeking admission, readmission to or the privilege of passing through the United States or any alien who seeks to become a resident of the United States or seeks to become a citizen of the United States and does not affect Joseph Falcone who became a citizen of the United States on the 18th day of February, 1925 in the Supreme Court of Onedia County, New York.

Tenth

That deponent and John C. Smith of counsel requested a copy of the minutes taken at said hearing but said Officer Anderson refused said request upon the ground that said minutes were government property, although payment was tendered for same.

Eleventh

That the Immigration and Naturalization Service has a "sinister" plan and notice to try to provoke any cause in order to attempt to make a case for revocation of the naturalization certificate of Joseph Falcone, where in reality none exists.

Twelfth

That on June 23, 1953 during the course of the special appearance and objections as to the jurisdiction relative to the subpoena under Section 235 (b) of the Immigration and Nationality Act (8 U. S. C. 1225) as heretofore stated, Acting Officer in Charge, Frank E. Latchford, threatened said Joseph Falcone in the presence of Anthony S. Falcone, Esq. and John C. Smith, Esq., that unless said Jo- [fol. 16] seph Falcone answered all questions put to him, things would happen and go hard for him.

That these threats made by said Officer Latchford were not put into the record.

Thirteenth

That the girl stenographer who was brought into the hearing room on June 23, 1953 by the hearing officer was not a qualified legal stenographer or court reporter and when counsel requested certain portions of the objections read back, said stenographer was unable to do so and apologized stating that she was not the stenographer who usually took the minutes and was unable to fully repeat what had taken place.

Fourteenth

Upon information and belief that the Immigration and Naturalization Service has, for upwards of one year, investigated the facts relating to the naturalization of Joseph Falcone and has been unable to find any fraud or a misstatement of a material fact.

Fifteenth

That the dilatory acts of the Immigration and Naturalization Service, through coercion, force, duress, fear, and now with the added weapon of "contempt", is an entrapment and an inquisition and certainly a very undemocratic practice.

Sixteenth

That if the Immigration and Naturalization Service did have any ground for a petition of revocation, it would have proceeded with the same directly instead of using [fol. 17] the sinister methods and tactics of entrapment, coercion, fear, threats, and under undemocratic and unconstitutional practices by said service on a "fishing expedition".

Seventeenth

That the burden of proof is upon the Immigration and Naturalization Service to show a fraud or misstatement of a material fact in order to petition for a revocation, and not upon a citizen of the United States that he has not done so, as the Department of Justice, Immigration and Naturalization Service is attempting to accomplish.

Nineteenth

That Exhibits "A", "B", "C" are relevant and material to the matter before the Court and have been incorporated herein for the purpose of assisting the Court to better understand and to perceive the sinister, undemocratic and unconstitutional tactics used by the Immigration and Naturalization Service in order to try to entrap, coerce, ridicule, force and intimidate the said Joseph Falcone.

Twentieth

Upon information and belief that the hearing officer, Stanley W. Anderson, is a prejudiced person; That it has come to the attention of deponent that said officer has stated on various occasions that "the Falcones and all Italians should be put on a boat and sunk in the middle of the Atlantic Ocean".

Twenty-first

That by reason of the facts above stated, said Harold E. Barnes, Officer in Charge of the Immigration Service, [fol. 18] the Immigration and Naturalization Servic Department of Justice, have no jurisdiction to issue and enforce the subpoena as to Joseph Falcone who is an American citizen naturalized on February 18th, 1925 in the Supreme Court of the County of Oneida, New York.

Anthony S. Falcone

Sworn to before me this 17th day of September, 1953. Gladys F. Leszczynski, Notary Public, in the State of New York, Appointed in Oneida County, My Commission Expires March 30, 1955.

EXHIBIT "B" TO AFFIDAVIT

Form 7-7
Rev. 12/10/51

United States Department of Justice
Immigration and Naturalization Service
Syracuse, New York
April 24, 1953

In reply
refer to:
2310-P-4542

Mr. Joseph Falcone
1623 Mohawk St.
Utica, N. Y.

Dear Sir:

Please call at the office named below, at the time and date indicated, for interview in connection with an official matter.

[fol. 19] It is important that you appear as requested.

Please bring this letter with you.

Very truly yours: (Sgd.) H. E. Barnes, Officer in Charge.

Place: County Clerk's Office, Utica, N. Y.
Date and Hour: Wednesday, April 29, 1953 at 11 A. M.
Ask for: Mr. Anderson.
Reason for appearance: For an interview.
Bring with you: This letter.

EXHIBIT "C" TO AFFIDAVIT

United States of America

Department of Justice

Immigration and Naturalization Service

Office of Origin: Syracuse, New York.

Subpena

Date June 18, 1953.

In re Joseph Falcone

To: Joseph Falcone, 1623 Mohawk Street, Utica, New York.

Pursuant to the provisions of Section 235 (a) of the Immigration and Nationality Act, you are hereby commanded to attend and give testimony as set forth below, viz:

Place of appearance: 304 Federal Bldg., Syracuse, New York.

Time you are required to appear: 10:00 A. M. EDST.

Date you are required to appear: Tuesday, June 23, 1953.

[fol. 20] You are also commanded to produce and bring with you the following books, papers, and documents, viz: evidence of your birth and of your original entry into the United States, and your naturalization Certificate. You are further commanded to make a statement before an officer of this Service at that time.

(Sgd.) F. E. Latchford, Acting Officer in Charge.

(Seal.)

Return on Service of Subpena

I hereby certify that on the — day of ——, 19—, I served the above subpena on the witness named above by —— ——

—— —— (Name), —— —— (Title).

[fol. 21] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

In the Matter of Application of HAROLD E. BARNES, Officer in Charge of Immigration and Naturalization Service, for Process to Enforce Subpoena as to Salvatore Falcone

ANSWERING AFFIDAVIT OF ANTHONY S. FALCONE

STATE OF NEW YORK,
County of Oneida,
City of Utica, ss:

Anthony S. Falcone, being duly sworn, deposes and says:

First

That he is the attorney for Salvatore Falcone in the above-entitled matter and is appearing specially herein for the purpose of this motion only to move to set aside the subpoena in this matter and the service thereof.

Second

That Salvatore Falcone maintains his residence at 5669 N. W. 7th Avenue, Miami, Florida and has resided there for upwards of eight years.

Third

That attached hereto and made a part hereof and marked [fol. 22] Exhibit "A" is a copy of Section 235 of the Immigration and Nationality Act (8 U. S. C. 1225).

Fourth

That attached hereto and made a part hereof and marked Exhibit "B" is a copy of a letter dated April 24, 1953 addressed to Joseph Falcone and signed by H. E. Barnes requesting Joseph Falcone to appear before Mr. Stanley W. Anderson for an interview on Wednesday, April 29, 1953 at 11:00 A. M. at the Oneida County Clerk's Office, Utica, New York.

That Salvatore Falcone received a similar letter requesting him to appear for an interview on the same date and at the same time, that is April 29, 1953 at 11:00 A. M., before

a Mr. Turman and Mr. Baker at the Immigration Building in Miami, Florida.

Fifth

That attached hereto and made a part hereof and marked Exhibit "C" is a copy of subpoena served upon Salvatore Falcone commanding him to appear at 304 Federal Building, Syracuse, New York on July 3, 1953 pursuant to the provisions of Section 235 (a) of the Immigration and Nationality Act (8 U. S. C. 1225).

Sixth

That attached hereto and made a part hereof and marked Exhibit "D" is a copy of the minutes taken at the hearing which took place on July 3, 1953 at the Federal Building, Syracuse, New York in compliance with the subpoena hereto annexed and marked Exhibit "C", hereto annexed.

[fol. 23] Seventh

That during June and July of the year 1952, officers of the Immigration and Naturalization Service of Miami, Florida called at the residence of Salvatore Falcone at 5609 N. W. 7th Avenue, Miami, Florida on three separate occasions seeking said Salvatore Falcone. That on each occasion, said officers were advised by Salvatore Falcone's son that he was visiting in Utica, New York with his son, deponent herein, and could be located at 1652 Conkling Avenue, Utica, New York.

That said officers advised Salvatore Falcone's son in Miami that he should inform his father as soon as he returned to the city to have him contact the Immigration Bureau concerning a matter of the utmost importance and also to bring with him at the time his naturalization certificate.

That Salvatore Falcone returned to Miami, Florida on or about the 20th day of September, 1952 and upon being advised by his son that he was wanted at the Immigration Bureau, he personally went down to said office.

That Salvatore Falcone was advised at said Immigration Bureau that they had a report stating he was an alien. Salvatore Falcone stated he was an American citizen and voluntarily produced his certificate of naturalization. They

took certain notes of that interview and thanked him for the courtesy of calling at their office.

Eighth

That on April 29, 1953 at 11:00 A. M. in compliance with a letter requesting an interview as hereinbefore mentioned, Salvatore Falcone accompanied by counsel, Henry L. Balaban of 117 N. E. 1st Avenue, Miami, Florida, appeared [fol. 24] before Immigration Officers Turman and Baker at the Federal Building in Miami, Florida; that at that time the said officers were advised that Anthony S. Falcone of Utica, New York, deponent herein, was the attorney for Salvatore Falcone and that Attorney Balaban was acting as counsel.

The said officers explained that the reason for this interview was at the request of the Syracuse, New York immigration office; that they desired to have an explanation from Salvatore Falcone as to the reason for the use of the name of Projelto by his family when they arrived into the United States in the year 1907. That Salvatore Falcone replied that he could not give them any reason because to his knowledge he came into this country in that year under the name of Falcone,—that he got married in the year 1911 under the name of Falcone,—that his children were all given the surname of Falcone,—that he has always been known by the name of Falcone. That the only persons who could have explained the reason for any other name used at the time of entry into this country would have been Salvatore Falcone's father, Antonio Falcone, or Maria Falcone, his mother, who brought Salvatore Falcone into this country with them in the year 1907, but unfortunately both parents have passed away.

That said officers again requested to see his naturalization certificate and birth certificate to which request Salvatore Falcone readily obliged.

Ninth

That since Salvatore Falcone has been a resident of Miami, Florida, each year during the summer months he comes north to the City of Utica, New York to visit with his son, Anthony S. Falcone, deponent herein, and resides with

[fol. 25] him at 1652 Conkling Avenue. That Salvatore Falcone is an ill man suffering with a serious heart ailment and a diabetic condition.

Tenth

That on June 30, 1953, Salvatore Falcone was served with a subpoena (Exhibit "C") to appear at the Federal Building in Syracuse, New York at 10:00 A. M. EDST on Friday, July 3, 1953 and was commanded to produce the following, viz: evidence of birth, original entry into the U. S., naturalization certificate and was further commanded to make a statement before an officer of the Service at that time. That at the appointed time, place and date, said Salvatore Falcone appeared with his attorney, Anthony S. Falcone, and John C. Smith of counsel.

Eleventh

That Anthony S. Falcone, attorney for Salvatore Falcone, and John C. Smith of Counsel, advised the hearing officer, Mr. Anderson, that they were appearing specially for Salvatore Falcone and not generally and respectfully objected to the jurisdiction under which said subpoena was allegedly issued by said Immigration and Naturalization Service, and read into the record Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1225), (Exhibit "A").

That Mr. Anderson asked Salvatore Falcone for the certificate of naturalization and birth certificate and for the third time, Salvatore Falcone exhibited the same to him.

Twelfth

That due to the fact that the Immigration and Naturaliza-[fol. 26] tion Service refused to furnish the attorney for Joseph Falcone with a copy of the minutes taken at the hearing of Joseph Falcone, said Anthony S. Falcone and John C. Smith brought with them into the hearing room an Official Court Stenographer to take the minutes of the hearing held for Salvatore Falcone, a copy of which is attached hereto and marked Exhibit "D".

Thirteenth

That Section 235 of the Immigration and Nationality Act of 1952 does not apply to Salvatore Falcone. That a reading of said section and its subsections thereto refers to aliens only and refers particularly to any person seeking admission, readmission or the privilege of passing through the United States or any alien who seeks to become a resident of the United States or seeks to become a citizen of the United States and does not affect Salvatore Falcone who became a citizen of the United States on the 21st day of July, 1925 in the Supreme Court of Oneida County, New York.

Fourteenth

That the Immigration and Naturalization Service has a "sinister" plan and motive to try to provoke any cause in order to attempt to make a case for revocation of the naturalization certificate of Salvatore Falcone, where in reality none exists.

Fifteenth

Upon information and belief that the Immigration and Naturalization Service has, for upwards of one year, investigated the facts relating to the naturalization of Salva- [fol. 27] tore Falcone and has been unable to find any fraud or a misstatement of a material fact.

Sixteenth

That the dilatory acts of the Immigration and Naturalization Service, through coercion, force, duress, fear, and now with the added weapon of "contempt", is an entrapment and an inquisition and certainly a very undemocratic practice.

Seventeenth

That if the Immigration and Naturalization Service did have any ground for a petition of revocation, it would have proceeded with the same directly instead of using the sinister methods and tactics of entrapment, coercion, fear, threats, and under undemocratic and unconstitutional practices by said service on a "fishing expedition".

Eighteenth

That the burden of proof is upon the Immigration and Naturalization Service to show fraud or misstatement of a material fact in order to petition for a revocation, and not upon a citizen of the United States that he has not done so, as the Department of Justice, Immigration and Naturalization Service is attempting to accomplish.

Nineteenth

That Exhibits "A", "B", "C" and "D" are relevant and material to the matter before the Court and have been incorporated herein for the purpose of assisting the Court to better understand and to perceive the sinister, undemocratic and unconstitutional tactics used by the Immigration [fol. 28] and Naturalization Service in order to try to entrap, coerce, ridicule, force and intimidate the said Salvatore Falcone.

Twentieth

Upon information and belief that the hearing officer, Stanley W. Anderson, is a prejudiced person. That it has come to the attention of deponent that said officer has stated on various occasions that "the Falcones and all Italians should be put on a boat and sunk in the middle of the Atlantic Ocean."

Twenty-first

That by reason of the facts above stated, said Harold E. Barnes, Officer in Charge of the Immigration Service, the Immigration and Naturalization Service, Department of Justice, have no jurisdiction to issue and enforce the subpoena as to Salvatore Falcone who is an American citizen naturalized on July 21, 1925 in the Supreme Court of the County of Oneida, New York.

Anthony S. Falcone.

Sworn to before me this 17th day of September, 1953. Gladys F. Leszczynski, Notary Public, in the State of New York. Appointed in Oneida County. My Commission Expires March 30, 1955.

[fol. 29] EXHIBIT "C" TO AFFIDAVIT

United States of America

Department of Justice

Immigration and Naturalization Service

Office of Origin:
Syracuse, New York

Subpena

Date June 30, 1953

In re Salvatore Falcone

To: Salvatore Falcone
1623 Mohawk St.,
1652 Conkling Avenue,
Utica, New York

Pursuant to the provisions of Section 235(a) of the Immigration and Nationality Act, you are hereby commanded to attend and give testimony as set forth below, viz:

Place of appearance: 304 Federal Building, Syracuse, New York

Time you are required to appear: 10:00 a.m. EDST

Date you are required to appear: Friday, July 3, 1953

You are also commanded to produce and bring with you the following books, papers, and documents, viz: evidence of your birth and of your original entry into the United States, and your naturalization certificate. You are further commanded to make a statement before an officer of this Service at that time.

(sgd) H. E. Barnes
Officer in Charge

(Seal)

[fol. 30] Return on Service of Subpena

I hereby certify that on the day of 19 , I served the above subpena on the witness named above by

(Name)

(Title)

Exhibit "D" To Affidavit

In the Matter of
Salvatore Falcone

Hearing July 3, 1953

In Naturalization Offices
Room 309 Federal Building
Syracuse, New York
Before Stanley W. Anderson, and
Immigration Reporter (Wilcox)

Appearances:

Anthony Falcone, John C. Smith (Of Counsel).
Transcript of testimony
Leland J. Twinem
Acting Reporter

Salvatore Falcone, present and not sworn.

Direct Examination

By Mr. Anderson:

Q. What is your name?

[fol. 31] Mr. Smith: He refuses to answer any questions.

Mr. Anderson: My question was, "What is your name?" He refuses to answer, is that correct, Mr. Smith?

Mr. Smith: That's correct. Now, Mr. Anderson, the same objection that I made in the Joseph Falcone matter

is going to be presented here at this time in Salvatore Falcone matter.

Mr. Anderson: Pardon me, this is Salvatore.

Mr. Smith: Salvatore. My name is John C. Smith: I am an attorney duly qualified to practice in the courts of the United States. My office is at 1603 State Tower Building, Syracuse, New York. I appear as counsel for Mr. Anthony Falcone who is the attorney for Salvatore Falcone who resides at 5609 Northwest 7th Avenue, Miami, Florida to whom the subpoena was issued dated June 30th, 1953 to appear before a United States Immigration official pursuant to the provisions of Section 235 (A) of the Immigration and Nationality Act and I assume that I am appearing before Mr. Anderson who is duly qualified as such under the Immigration and Nationality Laws. Now sir, I object to the use of the subpoena issued to Salvatore Falcone on the ground that provisions of Section 235 (A) of the Immigration and Nationality Act do not apply to Mr. Salvatore Falcone. The section refers to aliens only and refers particularly to any person seeking admission, re-admission or the privilege of passing through the United States, or any aliens who seek to become a resident of the United States and it does not affect Mr. Salvatore Falcone who became a citizen of the United States on the 21st day of July 1925 in the Supreme Court of the State of New York, [fol. 32] held at Rome, New York; on the further grounds that in the month of September 1952, officials of the Immigration and Naturalization service at Miami, Florida requested and did see the certificate of naturalization of said Salvatore Falcone on the ground they had reports that he was an alien; on the further grounds, sir, that on or about April 24th, 1953 he was again notified by mail to appear at the Miami Immigration and Naturalization Service Building for an interview to be held on April 29th 1953 and at that time Salvatore Falcone appeared at the hour and day with counsel Henry L. Balaban of Miami and he was there interviewed by officials Thurman and Baker who advised him that the interview was held at the request of the Syracuse, New York office. We reiterate that Mr. Falcone is a citizen of the United States, does not come under the jurisdiction of that Section and Act and, therefore, we refuse to be questioned under any of the grounds.

I may add, Mr. Falcone is a very sick man, he is diabetic and has a very serious heart condition and that any excitement or some amount of worry makes him very ill.

With that, we close, sir.

Mr. Anderson: Section 235 (A) of the Immigration and Nationality Act also provides that the Attorney General and any immigration officer, including Special Inquiry officers, have the power to require by subpoena the attendance and testimony of witnesses before immigration officials and special inquiry officials and the production of books, papers and documents relating to the privilege of any person to enter, re-enter, reside in or pass through the United States or concerning any matter which is material [fol. 33] and relevant to the enforcement of this Act and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpoena issued under the Act or refuses to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a result thereof.

Mr. Smith: Who was the subpoena served by?

Mr. Anderson: Served by me on Mr. Salvatore Falcone at Forestport, New York on June 30, 1953 by personal service and directs his appearance at 10:00 A. M. Eastern Daylight Saving Time on Friday July 3, 1953 at 304 Federal Building, Syracuse, New York; to produce and bring with him evidence of his birth and of his original entry into the United States and his naturalization certificate.

Mr. Anderson:

Q. Did you, Mr. Falcone, bring with you any or all of these documents today?

Mr. Smith: Just a minute, we have, for a second time we are herewith producing and showing you his naturalization papers.

(Same produced).

Mr. Anderson: Certificate of Naturalization =2120606 issued on petition =4541 to Salvatore Falcone then residing at 515 Bacon Street, Utica, New York who was then 33 years of age, five feet, six inches in height, color white, complexion light, eyes blue, hair gray, no visible distinguishing marks, former subject of Italy, naturalized at a special term of the Supreme Court of Oneida County at Rome, New York on July 21, 1925. The document in question bears a rubber stamp endorsement on the reverse to the effect that a passport was issued by the Department of State on December 11, 1936 and the naturalization certificate is returned to Mr. Smith.

Mr. Smith: This exhibit together with the next exhibit is being offered and shown to you voluntarily and not because of the subpoena. I show you his birth certificate.

Mr. Anderson: Birth certificate in the Italian language certifying to the birth of Salvatore Falcone son of Antonio and Maria Sclafani in Sciacca on August 21, 1891, issued on May 25, 1953 in the Commune Di Sciacca Province of Agrigento and that's returned to Mr. Smith.

The subpoena which was served by me on Mr. Salvatore Falcone on June 30, 1953 at Forestport, New York by personal service also commanded Mr. Salvatore Falcone to make a statement before an officer at the time specified for the return of the subpoena——

Q. Are you, Mr. Salvatore Falcone, prepared to make such a statement at this time?

Mr. Smith: Mr. Salvatore Falcone on the advice of his attorney and counsel at this time is advised that he does not and is not required to make such a statement because we still contend that the subpoena is not binding on Mr. [fol. 35] Falcone for the reasons previously stated.

Mr. Anderson: Is that all, Mr. Smith?

Mr. Smith: That's it.

Mr. Anderson: All right, I wih close the interview.

I Hereby Certify that the foregoing transcript was taken by me in the form of shorthand notes and later personally reproduced by me in present typewritten form.

I Further Certify the same to be a true and accurate transcription to the best of my knowledge and ability.

Leland J. Twinem, Official Municipal Court Reporter, Onondaga County Court House, Syracuse, New York.

[fol. 36] In The United States District Court For The Northern District of New York

In the Matter of

Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to Salvatore Falcone.

In the Matter of

Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to Joseph Falcone.

Order to Photostat Naturalization Records —Oct. 28, 1953

An application having been made by Harold E. Barnes, for process to enforce subpoena as to Salvatore Falcone and Joseph Falcone and said matter having been duly returnable before me and having been argued before me on the 21st day of September, 1953, the records of the Oneida County Clerk having to do with the naturalization of Salvatore Falcone and Joseph Falcone having been subpoenaed before me on said date and it appearing that it is proper and necessary for the disposition of this matter that photostatic copies thereof be made and provided to the Court and to respective counsel.

[fol. 37] Now, on motion of Anthony F. Caffrey, United States Attorney and upon the consent of Anthony S. Falcone, attorney for each of the above-named persons, it is hereby

Ordered that the Oneida County Clerk make or permit the making of photostatic copies in triplicate of page 42 and 43 and the papers attached thereto of Volume 20 of

The first contention of the immigration service in these applications is that the subpena power used against these naturalized citizens is authorized and delegated by the Congress in this particular part of the terms of 235 (a) of the Act (8 USCA 1225 (a)):

> "The Attorney General and any immigration officer, including special inquiry officers shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the ad- [fol. 41] ministration of the Service to that end may invoke the aid of any court of the United States."

The subsection concludes with the conferring of jurisdiction upon the district court to order compliance with such subpena.[1]

The second contention in behalf of the applications is that despite the express confinement of the subpena as "pursuant to the provision of section 235 (a) of the Act," the power to issue the subpoenas here is implicitly authorized and granted by the terms of 287 (b) of the Act (8 USCA 1357 (b)) relating to powers of immigration officers and employees.[2]

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[1] "Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

[2] "Sec. 287 (b) Any officer or employee of the Service designated by the Attorney General, whether individually

[fol. 42] Further, inasmuch as it is now frankly stated that the legality of the naturalization of the Falcones is under investigation, the subpena power is necessary in the investigation and report as to the institution of revocation proceedings in accordance with the regulations promulgated by the attorney general in the administration and enforcement of the Act in that respect.[3]

These contentions create a question of statutory construction. There is no judicial authority to my knowledge directly in point and the analysis of the intent of the Congress is made difficult by the immensity of the Act itself. The importance to the administration and enforce-

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or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this Act and the administration of the Service; and any person to whom such oath has been administered, under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621, title 18, United States Code."

[3] Sec. 340.11 Investigation and report. Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by willful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Commissioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for a possible criminal prosecution.

is not intended by this provision to sanction the indiscriminate questioning or harassment of citizens returning to the United States, but it is to be used by the immigration officers whenever there is reason to believe that a citizen is violating or about to violate the law and is about to become expatriated. Immigration officers are also granted the power to subpena the attendance and testimony of witnesses, and the production of books, papers, and documents in aid of the enforcement of the provisions of the bill. An alien who does not appear, to the examining immigration officer, to be admissible, clearly and beyond a reasonable doubt, shall be detained for further inquiry by a special inquiry officer. * * *"

"* * * Section 287 of Chapter 8 further specifies powers of immigration officers and employees of the Immigration and Naturalization Service. * * *"

As I read this background and the section as a whole, I cannot reasonably discern an intent that would allow subpena power over naturalized citizens for the purpose of investigation to ascertain good cause for the institution of revocation proceedings. The limitation of this administrative subpena power, in my judgment, must be kept within the confines of the provisions as stated and restricted to such purpose, and there is not the slightest indication in the legislative background nor the terms of the provisions that it may be used for the investigative [fol. 46] purpose here sought against a naturalized citizen. One judicial discussion of section 235 (a), together with other related sections, indicates generally that issues of law under such section concerns only aliens and not citizens of the United States by birth or naturalization. Int. Longshoremen's Union v. Boyd, 111 F. Supp. 802. In construing these provisions I have also kept in mind that it necessarily would have punitive impact upon an important right now held by the respondents, the revocation of which might ultimately result in deportation. Such punitive impact of a statute calls for strict construction of the terms. Mangaoang v. Boyd, 205 F. (2d) 553, cert. denied November 9, 1953, 22 L. W. 3121.

The most important reason for my conclusion as to the invalidity of the subpenas comes from a reading of the Act as a whole, which the government recommends in support of its contention. A specific, detailed and exact judicial procedure is set forth in section 340 for the revocation of naturalization certificates when they were procured by concealment of a material fact or by willful misrepresentation. The pertinent part of section 340 (a) is set forth below.[5] The most striking part of this procedure, [fol. 47] which is old in the law, is contained in section 340 (b).[6] In discussing the judicial procedure as outlined

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[5] "Sec. 340 (a). It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively." * * * (8 USCA 1451)

[6] "Sec. 340 (b) The party to whom was granted the naturalization alleged to have been procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States, or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

subpoena served upon him by said Officer in Charge of the Syracuse Office of the Immigration and Naturalization Service, U. S. Department of Justice, and to compel respondent to testify before duly authorized agents and employees of the Immigration and Naturalization Service and to produce for inspection and examination evidence of the date and place of birth, his original entry into the United States and his naturalization certificate, pursuant to Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C. A. 1225), and in default thereof, to be punished by this Court as a contempt thereof; and said respondent, Joseph Falcone, having appeared specially through his attorney, Anthony S. Falcone, Esq., and the argument on said motion having duly and regularly come on to be heard on said date, and on reading and filing the said order to show cause granted by the Hon. Stephen W. Brennan, United States Federal District Judge, dated September 9, 1953, and affidavit of Harold E. Barnes, verified on the 3rd day of September, 1953, and the notice of special appearance by respondent, Joseph Falcone, and the answering affidavit of Anthony S. Falcone, Esq., attorney for said respondent, with exhibits attached thereto, verified the 17th day of September, 1953, and after hearing Anthony F. Caffrey, United States Attorney on behalf of the Immigration and Naturalization Service, U. S. Department of Justice, and after hearing Anthony S. Falcone, Esq., attorney for respondent, Joseph Falcone, and said respondent having subpoenaed before me his naturalization record and order duly admitting him to citizenship which are contained in Volume 20, page 43 of said records on file at the Oneida County Clerk's office at Utica, New York, and upon the memorandum decision [fol. 51] made by this Court dated November 20, 1953 and filed with the United States District Clerk's office for the Northern District of New York in the City of Utica, New York on November 21, 1953, and upon the amended portion of said memorandum decision filed at said Federal District Clerk's Office on November 24, 1953, and upon all of the proceedings had heretofore, and after due deliberation having been had thereon, it is hereby

Ordered that the application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service,

for process to enforce subpoena as to Joseph Falcone is hereby denied and dismissed.

Dated: Utica, New York
December 3, 1953.

James T. Foley, United States District Judge.

[fol. 52] In United States District Court, Northern District of New York

Notice of Appeal—January 14, 1954

Notice is hereby given that Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, applicant above named, hereby appeals to the Court of Appeals for the Second Circuit from the judgment entered in this action on the 3rd day of December, 1953.

Dated: January 14th, 1954.

Theodore F. Bowes, United States Attorney, Attorney for Appellant, Office and Post Office Address, Federal Building, Syracuse 1, New York.

To: Glen A. Porter, Clerk, U. S. District Court, Federal Building, Utica, New York.

Anthony S. Falcone, Attorney for Joseph Falcone, 1213 First National Bank Building, Utica, New York.

[fol. 53] In United States District Court, Northern District of New York

Stipulation Extending Time and Order Thereon

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties herein that the appellants having filed their Notice of Appeal on January 15th, 1954, the time for appellant to file its record on appeal and to docket the appeal be and the same hereby is extended from February 24, 1954 to and including April 14, 1954 and the time for appellant to serve and file its designa-

tion of contents of the record on appeal pursuant to Rule 75 of the Rules of Civil Procedure be and the same hereby is extended to and including April 5th, 1954.

Dated: February 19, 1954.

Theodore F. Bowes, Attorney for Appellant; Anthony S. Falcone, Attorney for Appellee.

So Ordered: Stephen W. Brennan, Judge, U. S. District Court.

[fol. 54] In the United States District Court for the Northern District of New York

[Title omitted]

Stipulation as to Record on Appeal—March 23, 1954

It is stipulated and agreed by the parties that the record on appeal in both captioned cases shall consist of,

1. Order to Show Cause with affidavit and subpoena attached thereto in the case of Joseph Falcone.

2. Printing of order to show cause, affidavit and subpoena in the case of Salvatore Falcone is waived since the facts are substantially as set forth in the moving papers relating to Joseph Falcone, except that Salvatore Falcone was duly naturalized in the Supreme Court of New York at Rome on [fol. 55] July 21, 1925, and Certificate of Naturalization No. 2120666 was issued to him.

3. Notice of special appearance with affidavit and exhibits "B" and "C" attached thereto in the case of Joseph Falcone. Printing of exhibit "A" attached to the affidavit is waived.

4. Printing of the notice of special appearance and exhibits "A" and "B" in the case of Salvatore Falcone is waived since contents are the same as set forth in the moving papers of Joseph Falcone. Answering affidavit of Anthony S. Falcone and exhibits "C" and "D" attached thereto are to be printed.

5. Order to photostat naturalization records of respondents-appellees.

6. Photostatic copies of naturalization records of Joseph

Falcone and Salvatore Falcone will be furnished the Court as exhibits at time of argument.

7. Decision of Honorable J. T. Foley.

8. Order denying application to enforce subpoena in the case of Joseph Falcone.

9. Printing of order denying application to enforce subpoena in the case of Salvatore Falcone is waived since contents are same as in the case of Joseph Falcone.

10. Notice of appeal in the case of Joseph Falcone.

11. Printing of Notice of appeal in the case of Salvatore Falcone is waived as contents are same as in the case of Joseph Falcone.

12. Stipulation extending time to docket appeal in the case of Joseph Falcone.

13. Printing of stipulation extending time to docket appeal in the case of Salvatore Falcone is waived as the contents are the same as in the case of Joseph Falcone.

14. This stipulation.

[fol. 56] 15. Stipulation as to certification of record.

Theodore F. Bowes, Attorney for Applicant-Appellant; Anthony S. Falcone, Attorney for Respondents-Appellee.

Dated March 23rd, 1954.
Filed 3/24/54.

[fol. 57] In United States District Court, Northern District of New York

Stipulation as to Certification

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the District Court in this case, as agreed on by the parties.

Dated, Syracuse, N. Y., April —, 1954.

Anthony S. Falcone, Attorney for Appellee; Theodore F. Bowes, United States Attorney, Attorney for the Appellant.

[fol. 58] Clerk's Certificate to foregoing transcript omitted in printing.

the naturalization record of the Oneida County Supreme Court now on file in the office of the Oneida County Clerk.

Dated: October 28, 1953.

(S.) James T. Foley, United States District Judge.

[fol. 38] In United States District Court, Northern District of New York

Appearances:

Anthony F. Caffrey, United States Attorney, Northern District of New York, Attorney for Applicants, Federal Building, Syracuse, New York.

Anthony S. Falcone, Esq., Attorney for Respondents, 1213 First National Bank Building, Utica, New York.

Herman I. Bransé, Esq., Immigration & Naturalization Service, On the Brief.

Before: Hon. J. T. Foley—D.J.

Memorandum Decision of Foley, J.—November 20, 1953

These applications present a novel and important problem concerning administrative and investigative functions under the provisions of the Immigration and Nationality Act of 1952, 66 Stat. 163, 8 USCA 1101. The two separate applications are similar enough in factual background, nature and purpose to be discussed as one.

Joseph and Salvatore Falcone are naturalized citizens of the United States. Joseph Falcone assumed such [fol. 39] status by an order of the Supreme Court of the State of New York, Oneida County, on February 18, 1925, and Salvatore Falcone was duly admitted to citizenship by order of the same court, dated July 21, 1925. The Falcones came into this country on December 8, 1907, with their parents, who are now deceased, and at the time of entry Joseph was four years of age and Salvatore was sixteen.

A short time previous to the issuance of the subpoena here in question, each respondent received letters from immigration officials requesting that they appear at cer-

tain times and places for interview. The details of such interviews are not important except to note that Salvatore was more cooperative in the interview procedure than Joseph. He was asked to explain the reason for the use of the name Projelto by his parents when they entered the country and he answered he had no explanation because his father and mother were dead and he had always used and was known by the name Falcone. Joseph would not answer any questions when informed by the immigration officer that the reason for the interview would not be stated.

The result of this attitude on the part of the Falcones was the service upon them of separate subpoenas, one signed by an officer-in-charge and the other by an acting officer-in-charge of the Immigration and Naturalization Service. Each subpoena commanded them to appear on certain dates at the Federal Building in Syracuse, New York, to give testimony and make a statement before an officer of the service at the designated time and place, and further commanded each to produce and bring with them evidence of birth and original entry into the United States and naturalization certificate. Each subpena was entitled only "In re Salvatore Falcone" and "In re Joseph [fol. 4] Falcone;" each subpena specifically stated that it was pursuant to the provisions of section 235 (a) of the Immigration and Nationality Act. The respondents appeared pursuant to the subpenas and both refused to testify under oath, claiming that the subpenas were invalidly issued as against them because they were naturalized citizens and not aliens. Each produced for inspection their birth certificate and certificate of naturalization. Upon the return of the order to show cause, the respondents appeared specially, challenging the power to issue subpenas as against them under the terms of section 235 (a) of the Act. At the hearing upon such return, the official records of the Oneida County Clerk were subpenaed into court by the respondents and disclosed that the certificate of arrival or original entry demanded in each subpena are matters of official record as part of the naturalization proceedings and available to the Immigration service, although not open, as I understand it, to public inspection

ment of the Act is evident because it would ease the burden of investigations in such situations as here, but such reason of expediency cannot prevail if the subpena power exercised is in excess of the statutory grant. The authority of Congress to delegate the subpena power to administrative agencies is clearly established, even to the extent that it may delegate effective power to investigate violations of its own laws. However, the subpena power must remain [fol. 43] within the bounds of the legislative grant, not overreach the authority granted by Congress, and in investigatory matters should be conferred in express and explicit terms for that purpose. Harriman v. ICC, 211 U. S. 407; Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186, 201, 217; National Labor Board v. Anchor Rome Mills, 197 F. (2d) 447, 449. In my own judgment, subpenas should not issue upon hit or miss legal grounds.

In support of the first contention outlined, the government emphasizes the changes in section 235 (a) of the Act from the previous provision governing such situations as contained in section 16 of the Immigration Act of 1917 (8 USCA 152).[1] The word "alien" in the old statute was changed to "person" and a broad clause in relation to the power to subpena was added, "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." It was judicially settled under the old provision (8 USCA 152) that the subpena power could be exercised against aliens in either deportation or exclusion proceedings. Loufakis v. U. S., 81 F. (2d) 966; Graham v. U. S., 99 F. (2d) 746, reversing on other grounds U. S. v. Parson, 22 F. Supp. 149; In re Yaris, 109 F. Supp. 921, 922. Now the government says in its brief that this change and the addition in terminology in section 235 (a) are most significant and

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[1] * * * Any district director of immigration and naturalization designated by the Commissioner or any inspector in charge shall also have power to require by subpena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States * * *"

evidence a congressional intent to enlarge the subpena power to enable immigration officers to question every [fol. 44] person, alien or citizen, in connection with the investigation of any matter under any section of the Immigration and Nationality Act. However, it is only necessary for me to decide whether these naturalized citizens under investigation as the target for possible revocation proceedings, and ultimately possible deportation proceedings, are subject to subpena under this portion of the Act. I do not think so for several reasons.

Section 235 in the body of the Act is entitled "Inspection by Immigration officers." (66 Stat. 198). In the Title of Contents it is listed under Chapter 4, "Provisions relating to Entry and Exclusion" (66 Stat. 163). In the analysis of the bill, contained in House Report No. 1365, (U. S. Code Service, 1952, pages 1709-1710), the discussion of section 235 is under the heading "Entry, Exclusion and Deportation of Aliens (Ch. 4 and Sec. 287)." Such analysis, although it pertains to other provisions of subsection 235 (a), outside that portion relied upon here by the government, gives some enlightenment as to the congressional intent of section 235:

> "* * * In conjunction with their inspection of aliens, the bill authorizes the immigration officers to board and search vessels, aircraft, railway cars or any other conveyance or vehicle in which they believe aliens are being brought into the United States. The immigration officers are empowered to administer oaths, take evidence and make a record, if necessary, concerning the enforcement of the bill with reference to the privilege of any alien to enter, pass through or reside in the United States. Any person coming to the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain, whether or not he intends [fol. 45] to remain permanently, whether, if an alien, he intends to become a citizen, and such other information as will aid the immigration officers in determining whether the person is a national of the United States or an alien, and, if the latter, whether he is subject to exclusion under any of the provisions of the bill. It

in section 15 of the Act of 1906, similar to the one we have today, Judge Van Devanter stated:

> "* * * the section makes no discrimination between the rights of naturalized and native citizens, and does not in anywise affect or disturb rights acquired through lawful naturalization, but only provides for the orderly cancellation, after full notice and hearing, of certificates of naturalization which have been procured fraudulently or illegally. It does not make any act fraudulent or illegal that was honest and legal when done, imposes no penalties, and at most provides for the annulment, by appropriate judicial proceedings, of merely colorable letters of citizenship, to which their possessors were never lawfully entitled." (Luria v. U. S. (1913), 231 U. S. 9, 24).

A citizen is entitled to have his status determined by a judicial tribunal and have the security of judicial over administrative action. Bilokumsky v. Tod, 263 U. S. 149, [fol. 48] 152; Ng Fung Ho v. White, 259 U. S. 276.

If the subpenas here were allowed to stand, the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action, and the provisions for personal notice, sixty-day time period to answer in section 340 (b) of the Act would be empty words. The method of challenge to fraudulent naturalization is plainly prescribed and any examination of the party against whom it is directed should be in accord with the judicial process. The investigative power of the Service is an important one, and I carefully avoid any undue limitation or hampering of such power. I agree that naturalization is a privilege rather than a right and an alien who seeks this privilege must conform strictly with the requirements established by statute. U. S. v. Ness, 245 U. S. 319.

It must equally be kept in mind that under our constitution a naturalized citizen stands on equal footing with the native citizens in all respects, save that of eligibility to the Presidency. Osborn v. Bank of U. S., 22 U. S. (9 Wheat.) 738; Boyd v. Thayer, 143 U. S. 135; Luria v. U. S., 231 U. S. 9.

My outlined reasoning in relation to section 340 of the

Act is sufficient answer to the contentions that the subpena power should in this particular situation be implied as concomitant to the provisions of section 287 (b) of the Act, and 8 CFR 340.11. The issuance and form of subpenas in proceedings pending before immigration officials are set forth in 8 CFR 287.4 (a) (b).

Each application to enforce the subpena involved is denied and dismissed.

Dated: Albany, New York,
November 20, 1953.

[fol. 49] In United States District Court, Northern District of New York

At a Motion Term of the United States District Court in and for the Northern District of New York held at the Federal Court House in the City of Albany, New York on the 21st day of September, 1953.

Present: Hon. James T. Foley,
United States District Judge.

In the Matter of Appplication of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to Joseph Falcone, Civil No. 1494.

Order Denying Application

The above named, Harold E. Barnes, Officer in Charge of the Syracuse, New York District Office of Immigration and Naturalization Service, U. S. Department of Justice, having obtained an order directing respondent, Joseph Falcone, to show cause at a Motion Term of this Court held at the Federal Court House in the City of Albany, New York on the 21st day of September, 1953, why an order should not be made directing said respondent, Joseph Falcone, to appear before said Harold E. Barnes, Officer in Charge of the Syracuse, New York District Office of the Immigration and Naturalization Service, U. S. Department of Justice, and to com-
[fol. 50] pel respondent, Joseph Falcone, to comply with a

[fol. 59] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket Nos. 23081, 23082, 23172

Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for Process to Enforce Subpoena as to Salvatore Falcone

Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for Process to Enforce Subpoena as to Joseph Falcone

EDWARD J. SHAUGHNESSY, as District Director, Immigration and Naturalization Service, New York District, Petitioner-Appellant,

against

JOHN ODDO, Respondent-Appellee

OPINION—January 10, 1955.

Before Chase, Medina and Hincks, Circuit Judges

Appeals from orders of Judge Foley, United States District Court for the Northern District of New York, and Judge Weinfeld, United States District Court for the Southern District of New York, holding invalid and unauthorized by law subpoenas, issued by an immigration officer, under Section 235(a) of the Immigration and Nationality Act of 1952, for the discovery of evidence to support a suit [fol. 60] denaturalization, as provided in Section 340 of the 1952 Act. Reported below, *Matter of Falcone*, 116 F. Supp. 464; *In re Oddo*, 117 F. Supp. 323. Reversed.

Theodore F. Bowes, United States Attorney for the Northern District of New York, Syracuse, New York (Charles J. Miller, Ass't. U. S. Attorney, of Counsel; Herman I. Branse, Acting District Counsel Immigration and Naturalization Service, On the Brief), for applicant-appellant Harold E. Barnes.

Anthony S. Falcone, Utica, New York, for respondents-appellees Salvatore Falcone and Joseph Falcone.

J. Edward Lumbard, United States Attorney for the Southern District of New York, New York City (Harold J. Raby, Assistant United States Attorney and Lester Friedman, Attorney, Immigration and Naturalization Serv-

ice, of Counsel), for petitioner-appellant Edward J. Shaughnessy.

Kaufman & Edelbaum, New York City (Maurice Edelbaum and Seymour Teitelbaum, New York City, of Counsel) for appellee John Oddo.

MEDINA, Circuit Judge:

The sole question raised by these two appeals is whether Section 235(a) [1] of the Immigration and Nationality Act of

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[1] "Sec. 235. (a) The inspection, other than the physical and mental examination of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United States, shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration

1952 (the McCarran-Walter Act), 66 Stat. 163, 198-9; 8 U. S. C. A. Sec. 1225(a), authorizes an officer of the Im- [fol. 61] migration and Naturalization Service to issue a subpoena requiring a naturalized citizen to testify, in an effort to determine if "good cause" exists for the commencement of proceedings to revoke the order admitting [fol. 62] such person to citizenship.[2]

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officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

[2] "Sec. 340. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate,

In the cases of Salvatore Falcone and Joseph Falcone, the Officer in Charge of the Immigration and Naturalization Service in Syracuse, New York, applied, on notice, to the United States District Court for the Northern District of New York for orders directing the Falcones, upon whom subpoenas had been served, and who challenged the authority of the Officer to issue the subpoenas under Section 235(a), to appear and testify. In the case of John Oddo the subpoena was issued by the District Director of Immigration and Naturalization for the New York District, Judge Dimock in the Southern District of New York made an ex parte order directing Oddo to appear and testify, and Oddo moved to vacate Judge Dimock's order. In each case it appeared that testimony was sought relative to the possibility of instituting an action in equity pursuant to the terms of Section 340 of the Immigration and Nationality Act of 1952, for a decree of denaturalization, the Falcones having been admitted to citizenship in 1925, and Oddo in 1931. Judge Foley refused to direct the Falcones to appear and testify [fol. 63] and Judge Weinfeld granted the motion to vacate, each holding that Section 235(a) authorized the issuance of subpoenas only in cases involving the entry, exclusion and deportation of aliens. The identical proposition was decided contrariwise by Judge Welsh, in the District Court for the Eastern District of Pennsylvania. *In re Minker*, 118 F. Supp. 264 (1953).

An "immigration officer" is defined in Section 101(a)(18) of the 1952 Act as "any employee or class of employees of the Service or of the United States designated by the Attorney General * * * to perform the functions of an immigration officer specified by this Act or any section thereof;" and Section 101(b)(4) defines a "special inquiry officer" as any immigration officer "who the Attorney General deems specially qualified to conduct specified classes of proceedings * * * required * * * to be conducted by or

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respectively * * *. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence."

before a special inquiry officer and who is designated and selected by the Attorney General * * *." The specified classes of proceedings referred to are exclusion proceedings, Section 235(b), and deportation proceedings, Section 242(b). Without pausing to spell out the details, it will suffice to say that the established method of selecting these immigration and special inquiry officers gives assurance that they have had experience in miscellaneous phases of the work of the Immigration and Naturalization Service and possess a special competence and familiarity with the wiles and devices of those seeking in one way or another to defeat the purposes of and to evade the laws governing immigration and naturalization, which are complex and highly technical.

Those who performed analogous functions under the predecessor statute, The Immigration Act of 1917, were described in Section 16 thereof, the Section which as [fol. 64] amended became Section 235(a) of the Act of 1952, as "immigrant inspectors." The heading of this old Section 16 reads: "Physical and Mental Examination of Alien Passengers; Regulations; Authorization of Inspectors to Administer Oaths; Appeal to Medical Boards and Personnel Thereof; Subpena of Witnesses and Documents; Penalty." There were no "Titles" or "Chapters" as in the subsequent 1952 Act.

Section 16 provided that: "[S]aid inspectors (the immigrant inspectors) shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States * * *" and that, "[A]ny district director of immigration and naturalization designated by the Commissioner or any inspector in charge shall also have power to require by subpoena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States; and any district court within the jurisdiction of which investigations are being conducted by an immigrant inspector may * * * issue an order requiring such person to appear * * * and testify; and any failure to obey such order * * * may be punished * * * as a contempt."

There is no dispute about the fact that the provisions just referred to constituted the authority and machinery for administrative investigations by the Service under the 1917 Act, and this authority was widely and continuously exercised.

The Revisers' Notes make it plain that the new Section 235(a) of the 1952 Act, pursuant to which the Falcone and Oddo subpoenas were issued, is the successor to the old Section 16 of the 1917 Act. The amendments are so specific and clear as practically to determine the issue before us. [fol. 65] The "immigrant inspectors" are now "any immigration officer, including special inquiry officers," as defined supra, and they are given by Section 235(a) power to administer oaths and to take and consider evidence "of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service * * *." And Section 235(a) proceeds to use identical language in connection with the power of "any immigration officer, including special inquiry officers" to "require by subpena the attendance and testimony of witnesses * * * relating to the privilege of any person to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service.". As in the old Section 16 the appropriate District Courts are to direct such witnesses to appear and testify and to punish a refusal to testify as a contempt; and Section 287(b) repeats the key phrase above quoted in describing the powers of immigration officers and employees in administering oaths and taking and considering evidence.

Thus certain officers of the Service, designated by the Attorney General, and undisputedly including those who issued the subpoenas in these cases now before us, were explicitly given increased administrative investigatory powers. The counterpart of the phrase appearing in the 1917 Act is strengthened and broadened by the addition of the words "of or from any person," and "or person he believes or suspects to be an alien;" and there is added, both in the part of the section relating to the administration

of oaths and the taking and consideration of evidence and in that relating to the subpoena power and its enforcement [fol. 66] by the District Courts, as well as in Section 287(b), the new and comprehensive words "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." Surely investigations of an administrative character, conducted by the very officials who by training and experience have expert knowledge of the whole subject of immigration and naturalization, and designed not merely to procure evidence to support a denaturalization proceeding under Section 340 of the Act, but to ascertain the true facts and in many if not most cases, exonerate those under investigation, are "concerning * * * matter which is material and relevant to the enforcement" of the Act. True, the language is general, there is no specific reference to denaturalization proceedings; but the very generality of the terms of the statute compels the conclusion that the powers thus conferred may be exercised in reference to the enforcement of Section 340 of the Act, as well as that of all the rest. We are not at liberty to disregard language the import of which is so plain, simply because, in the allocation of "Titles," and "Chapters," and Section headings, the language conferring administrative investigatory powers is included in "Chapter 4—Provisions Relating to Entry and Exclusion" of "Title II—Immigration," and as part of a long section headed, "Inspection by Immigrant Officers." The historical relationship between the old Section 16 of the 1917 Act and the new Section 235(a), as well as the perfectly clear character of the added words above referred to, and their iteration, completely rule out the possibility of inadvertence, confusion or ambiguity. And it is worthy of note that the Act of 1952 was not hastily thrown together. On the contrary, it is the result of years of patient study by experts thoroughly conversant with the long history [fol. 67] of successive Acts affecting immigration and naturalization and allied matters, and having ripe experience with the practical problems with which the Service has had to grapple.

The rule of construction applicable in such cases is well

restated in *Railroad Trainmen v. B. & O. R. Co.*, 331 U. S. 519, 528-9 (1947):

> "Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner; to attempt to refer to each specific provision would often be ungainly as well as useless. As a result, matters in the text which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text." *United States v. Fisher*, 2 Cranch 358, 386; *Cornell v. Coyne*, 192 U. S. 418, 430; *Strathearn S. S. Co. v. Dillon*, 252 U. S. 348, 354. For interpretative purposes, they are of use only when they shed light on some ambiguous word or phrase. They are but tools available for the resolution of a doubt. But they cannot undo or limit that which the text makes plain."

It is said that a reading of the 1952 Act as an integrated whole demonstrates that Section 235(a) was intended to be limited to entry, exclusion and deportation. But our reading of the Act in its entirety leaves us with a contrary impression. Moreover, if Section 235(a) is to be applicable only to entry, exclusion and deportation, as held below, what becomes of the words "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service"? Are these significant words to be left hanging in the air, as it were, and given no effect whatever?

Aside from the argument based upon the heading of Section 235(a) and the inclusion of the administrative subpoena power in Title II of the 1952 Act, relating to Immigration, and that concerning denaturalization proceedings in Title III on Nationality and Naturalization, the principal contentions of respondents stem from the difference in [fol. 68] nature between administrative and judicial proceedings and the various provisions of the Act and the Regulations which implement it. Thus it is noted that, pursuant to the terms of Section 340, it is the duty of "the United States district attorneys for the respective districts"

to institute "upon affidavit showing good cause therefor" proceedings seeking an order of denaturalization, that such proceedings are judicial in character, that the party thus sued shall have sixty days personal notice in which to answer the petition; and it is said that, if the subpoena power contended for here by the government were sustained, "the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action." It seems to be thought that the nature of adversary proceedings of a judicial nature is such that the rights of the United States as petitioner in a denaturalization proceeding, as to discovery and other procedural matters, should be on a parity with those of the respondent therein, despite the special interest of the government in matters relating to immigration and naturalization and the undoubted power of the Congress to make provision for investigations by government officials preliminary to the commencement of action in court. Moreover, it is said that Section 235(a) and Section 335(b) of the Act are duplicitous, and that this very alleged duplicity gives rise to an inherent ambiguity.

There is no question whatever about the fact that the investigations sought to be pursued by the issuance of these subpoenas are administrative in character and that a denaturalization proceeding is unqualifiedly judicial. But this presents no inconsistency; nor do we find that Sections 235(a) and 335(b) impinge upon one another in any way. Section 235(a) is purely administrative, as we have already observed. But Section 335(b) relates to proceedings for [fol. 69] naturalization, which have since very early times been held to be judicial in character. The subpoena powers given in Section 335(b) are incidental to these judicial proceedings, and this is made clear by the language of the section to the effect that, upon a refusal by any person to obey a subpoena, any employee of the Service designated for the purpose by the Attorney General "may invoke the aid of any court exercising naturalization jurisdiction as specified in section 310 of this title; and any such court may in the event of neglect or refusal to respond," require such person to appear and testify, and, upon further failure of compliance, punish for contempt. Section 310 enumerates the state courts as well as the federal courts in which judicial proceedings for naturalization may be instituted. Thus, the

careful integration of the 1952 Act indicates that its several parts are closely articulated into a comprehensive, smoothly functioning whole. After the filing of a petition for naturalization, all examinations and investigations by the officers and employees of the Service designated for that purpose by the Attorney General are conducted pursuant to powers defined and described in Section 335(b). The statute and the subject matter of immigration and naturalization are sui generis; and the exercise of these administrative and judicial investigatory powers side by side and pari passu is, it seems to us, clearly envisioned by the pattern of the statute.

That administrative investigations may be and are often intended to serve as preliminaries to adversary proceedings of a judicial character to which the United States is a party is more or less of a commonplace, where such investigations will serve the public interest. See, e.g., Internal Revenue Code § 7602 (1954); Atomic Energy Act, 42 U. S. C. A. § 1812(a) (3); Civil Aeronautics Act, 49 U. S. C. A. §§ 642, [fol. 70] 644(b), 459, 487; Securities Act, 15 U. S. C. A. § 78(u); Public Utility Holding Company Act, 15 U. S. C. A. § 79(r). As stated by Mr. Justice Jackson, writing for the Supreme Court, in *United States* v. *Morton Salt Co.*, 338 U. S. 632, 642-3 (1950):

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence, but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law."

In view of the broad general language of Section 235(a) it does not seem to us surprising that no reference is made in Section 340 to the administrative investigatory powers which the Service now seeks to exercise. Nor do we find anything improperly included in or omitted from the Regulations, now so clearly integrated with the various sections of the Act. There is no point in merely repeating in the Regulations something already apparent on the face of the statutes. Naturally, the Regulations affecting "Procedural and Other Non-substantive Provisions" of Section 235(a) relate to the sort of detailed run-of-the-mill practical problems arising from day to day in connection with immigration inspections.

Moreover, Regulation §340.11 [8] seems to tie in perfectly [fol. 71] with the interpretation we have given of Section 235(a) as conferring new and broad administrative investigatory powers upon immigration officers delegated by the Attorney General to exercise these powers. Thus "whenever it appears that any grant of naturalization may have been procured by concealment or wilful misrepresentation, the facts shall be reported to the district director having jurisdiction * * *." Moreover, where the commission of a crime is indicated—a "violation of section 1425 of Title 18 of the United States Code"—the facts may be presented by the district director "to the appropriate

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[8] §340.11 *Investigation and report.* Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by wilful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Commissioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for possible criminal prosecution.

United States Attorney for possible criminal prosecution;" but "[I]f the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Commissioner with a recommendation as to whether revocation proceedings should be instituted." The "investigation to be made" must of necessity be administrative in character; and it is noteworthy that additional protection to the naturalized citizen is afforded by the "report" and "recommendation" to the Commissioner, who in turn, but only after he decides, in the exercise of his judgment and discretion in the premises, that a civil action in equity for denaturalization should be brought, will forward the dossier or a summary thereof to the United States "district attorneys," who "upon affidavit showing good cause" are, according to the [fol. 72] provisions of Section 340, to "institute proceedings" in the appropriate state or federal court to effect revocation of the certificate of naturalization. The articulation between the various sections of the Act and the Regulations is compact and in no way ambiguous or repetitious. No effort is wasted on unnecessary commentary; and provision is made for the very sort of administrative orderliness that it is the purpose of the Regulations to serve. Again and again is the administrative investigatory power of the Service recognized, and in the very matter of denaturalization proceedings under Section 340.

Broad policy considerations, plainly to be seen on the face of the Immigration and Nationality Act of 1952, are equally at variance with the narrow interpretation of Section 235(a) which is reflected in the orders appealed from.

Even as early as 1903 the Congress framed immigration laws which took cognizance of subversives (Act of March 3, 1903, c. 1012; 32 Stat. 1213). But in recent years infiltration, by the hirelings and conspiratorial agents of Communism, and by the propagandists and enthusiasts of that and other alien ideologies equally repugnant to our free institutions, has become more and more troublesome and menacing. It must not be forgotten that the Subversive Activities Control Act of 1950 (Act of September 23, 1950, c. 1024, Title 1, §§ 1-32; 64 Stat. 987) amended numerous

sections of various immigration and naturalization laws, and most of these amendments have been incorporated into the 1952 Act with which we are now concerned. The findings relative to totalitarian dictatorship and the world communist movement which are found in Section 2 of the Subversive Activities Control Act of 1950 have a direct bearing on the Congressional intent behind Section 235(a) [fol. 73] of the 1952 Act; and one of the findings is especially significant. Section 2(14) of the 1950 Act states:

> "One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society."

Suffice it to say that there is abundant internal evidence in the Act of 1952, and those laws which have been integrated into its warp and woof, to indicate that the Congress in bringing together for the first time in our history all the laws regulating immigration and naturalization, into one extensive compilation, was particularly sensitive to the need for prompt and effective dealing with subversives. Again and again we find a steady strengthening of the investigatory powers of the Service,[4] and, where experience prior to the passage of the Act of 1952 disclosed the need therefor, holes in previously existing laws were plugged and gaps were filled.[5] This was done so that the facts

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[4] E. g., Secs. 105, 235, 287, 335, 8 U.S.C.A. Secs. 1105, 1225, 1357, 1446.

[5] E. g., Sec. 101, 8 U.S.C.A. Sec. 1101, clarified the definition of "entry" which had given the courts considerable difficulty in previous cases. See *Delgadillo* v. *Carmichael*, 332 U.S. 388 (1947) and *Di Pasquale* v. *Karnuth*, 158 F. 2d 878 (C.A. 2, 1947); Sec. 318, 8 U.S.C.A. Sec. 1429, eliminated the anomolous situation confronting the court in *U.S. ex rel Walther* v. *District Director*, 175 F. 2d 693 (C. A. 2, 1949). See *U.S. ex rel Jankowski* v. *Shaughnessy*, 186 F. 2d 580 (C.A. 2, 1951); Sec. 243(c), 8 U.S.C.A. Sec. 1253(c), specifically corrected the problem confronting the courts under the prior provision in *U.S.* v. *Prince Line Ltd.*, 189 F. 2d 386 (C.A. 2, 1951); Sec. 274, 8 U.S.C.A. Sec. 1324,

might be promptly ascertained and appropriate and expeditious action taken, not only by way of exclusion or deportation, but in the general administration and enforcement of the Act, applicable to the whole subject of immigration and naturalization as set forth therein.

[fol. 74] This does not mean that the Falcones and Oddo are charged with or even suspected of subversion. Nothing in these records now before us indicates that any of the respondents has ever been engaged in or had any knowledge of subversive activities of any kind. Nor are they to be criticized for challenging the authority of the immigration officers to issue the subpoenas. They had a perfect right to do that. Furthermore, in so far as concerns the interpretation of Section 235(a), we may assume that they may well be exonerated at the conclusion of the investigations. But the answer to the question before us does not depend upon what may or may not be revealed in a particular case; and it is plain that the exercise of these increased administrative investigatory powers by immigration officers in ferreting out concealments and frauds connected with naturalization proceedings, will put the government in a position to deal more effectively with subversives.

Accordingly, we conclude that the increased administrative investigatory powers given by the terms of Section 235(a) of the 1952 Act were intended to relate to the enforcement of the Act as a whole, as stated therein, including the ascertainment of such facts as may tend to support a petition for denaturalization. The fact that deportation may follow denaturalization merely emphasizes further the reasonableness of the enlargement of powers of immigration officers which we find in Section 235(a).

We share the solicitude of the two able district judges below, that naturalized citizens be not harassed by subpoenas issued pursuant to legislation of doubtful applicability nor deprived of "the security of judicial over administrative action;" but we think the statute is free from

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cures the omission, from the earlier statute, of penalty provisions for certain of the offenses described therein. The earlier defect was pointed out in *U.S.* v. *Evans*, 333 U.S. 483 (1948).

ambiguity. Nor does it seem to us that the denaturalization [fol. 75] suit, which may in some cases follow the administrative investigation provided for in Section 235(a), will lack any of the safeguards and protections which are commonly associated with judicial proceedings. Respondents will still have their sixty days to answer the petitions, should they be filed, together with the protection afforded by the Federal Rules of Civil Procedure; and they may still urge any constitutional objection to questions addressed to them by the immigration officers in the course of the investigations.

The orders appealed from are reversed; and the respective District Courts directed to proceed in accordance with this opinion.

[fols. 76-77] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of the Application of HAROLD E. BARNES, Officer in Charge of Immigration & Naturalization Service for Process to Enforce Subpoena as to Salvatore Falcone

JUDGMENT—January 10, 1955

Appeal from the United States District Court for the Northern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) A. Daniel Fusaro, Clerk.

[fol. 78] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of the Application of HAROLD E. BARNES, Officer in Charge of Immigration & Naturalization Service for Process to Enforce Subpoena as to Joseph Falcone

JUDGMENT—January 10, 1955

Appeal from the United States District Court for the Northern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) A. Daniel Fusaro, Clerk.

[fol. 79] [File endorsement omitted.]

[fols. 80-88] Petition for Rehearing Covering 9 Pages Filed January 24, 1955 Omitted from this Print. It Was Denied, and Nothing More by Order February 8, 1955.

[fols. 89-90] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted].

ORDER DENYING PETITION FOR REHEARING—February 8, 1955

Before Chase, Medina and Hincks, Circuit Judges.

Anthony S. Falcone, Attorney for Petitioners, Salvatore Falcone and Joseph Falcone.

PER CURIAM:

Petition for rehearing denied.

Harrie B. Chase, Carroll C. Hincks, Harold R. Medina, U. S. Circuit Judges.

[fol. 91] In United States Court of Appeals, Second Circuit

[Title omitted]

Order Denying Petition for Rehearing—February 8, 1955

A petition for a rehearing having been filed herein by counsel for the appellees,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

(S.) A. Daniel Fusaro, Clerk.

[fol. 92] [File endorsements omitted.]

[fol. 93] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 94] Supreme Court of the United States, October Term, 1954

No. 716

Salvatore Falcone and Joseph Falcone, Petitioners,

vs.

Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service

Order Allowing Certiorari—Filed May 16, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar and assigned for argument immediately following No. 625.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.